

REMARKS

The Official Action mailed August 25, 2009, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicant notes with appreciation the consideration of the Information Disclosure Statements filed on August 16, 2006; October 17, 2006; August 13, 2007; and April 9, 2008.

Claims 1-6 are pending in the present application, of which claims 1, 3 and 6 are independent. Claim 1-3, 5 and 6 have been amended to better recite the features of the present invention. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

The Official Action rejects claims 1-6 under 35 U.S.C. § 112, second paragraph, asserting that "the phrase 'maybe' renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention" (page 2, Paper No. 20090819). While the Applicant respectfully disagrees and traverses the above assertion in the Official Action, these claims have been amended to replace "may be" with either "are" or "is" as is grammatically appropriate. The Applicant respectfully submits that claims 1-6 particularly point out and distinctly claim the subject matter which applicant regards as the invention and are definite. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112 are in order and respectfully requested.

The Official Action rejects claims 1-6 as obvious based on EP 1 106 968 to Mannesmann and JP 08-094374 to Sunaga or U.S. Patent No. 6,510,384 to Okano. The Applicant respectfully submits that a *prima facie* case of obviousness cannot be maintained against the independent claims of the present application, as amended.

As stated in MPEP §§ 2142-2144.04, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some reason, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some reason to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The prior art, either alone or in combination, does not teach or suggest all the features of the independent claims, as amended. Independent claims 1 and 3 have been amended to recite "wherein the calculation unit operates to search a route between two consecutive locations in the via-sequence, and when a link or node to be passed through during congested time slots are included in data for the route between the two consecutive locations, the calculation unit further operates to change the value of cost information of the congested link or node to a predetermined greater value and thereafter to re-search a route between the two consecutive locations." Independent claim 6 has been amended to recite "wherein the calculation step performs searching a route between two consecutive locations in the via-sequence, and when a link or node to be passed through during congested time slots are included in data for the route between the two consecutive locations, the calculation step further performs changing

the value of cost information of the congested link or node to a predetermined greater value and thereafter re-searching a route between the two consecutive locations.”

These features are supported in the present specification, for example, by page 24, line 30, to page 25, line 7; and block S8 of the flowchart shown in Figure 9, i.e. “When links or nodes to be passed through during congested time slots are included in the route data between the two locations, the route pattern generation unit 23, as re-search means, changes the value of cost information of the congested link or node to a predetermined greater value (for instance, an allowable maximum value) (step S8), and then researches a route between the two locations (step S6).”

The Applicant respectfully submits that Mannesmann and Sunaga or Okano, either alone or in combination, do not teach or suggest the above-referenced features of the present invention.

Since Mannesmann and Sunaga or Okano do not teach or suggest all the claim limitations, a *prima facie* case of obviousness cannot be maintained. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) are in order and respectfully requested.

The Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(a), 1.20(b), 1.20(c), and 1.20(d) (except the Issue Fee) which may be required now or hereafter, or credit any overpayment to Deposit Account No. 50-2280.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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